

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO.3854 OF 1990

Ramaswami Krishnan

...Petitioner

vs.

Life Insurance Corporation  
of India and others

...Respondents

Mr.S.C.Naidu for the petitioner as Amicus Curiae  
Ms Snehal Paranjape i/b M/s.Little & Co.for the respondents

CORAM:H.L.GOKHALE & A.S.OKA,JJ.

DATE : FEBRUARY 14,2006

JUDGMENT: (PER GOKHALE J.)

1. The Petitioner herein is a former employee of the first Respondent-L.I.C. He retired on 30th June 1998 as an Administrative Officer to which post he was promoted on 26th June 1991. It is his case that he was entitled to further promotion viz. of the Assistant Divisional Manager and that the same has been denied for deliberate and malafide reasons. It is his case that he has been discriminated against. He has therefore filed this Petition seeking writ of mandamus that he should be promoted to the higher post right from 1994. Alternatively, he has sought the order that he be granted stagnation increment which according to him was due to him from 1994.

2. The main submission of the Petitioner is that his record was good and that he has put in meritorious service and in view thereof he ought to have been promoted to the higher post. He has pointed out that from time to time he had been

given the responsibility of the higher post. His financial powers were enhanced to the post of the Assistant Divisional Manager, yet his promotion as such was denied. It is his submission that the very fact that the higher financial powers were given to him indicates that he was capable of discharging the duties of higher post. However, according to him promotion has been denied for extraneous reasons because the authorities above him have taken a prejudicial view in view of some reports made by him pointing out the deficiencies in the working of some of the branches.

3. A reply has been filed on behalf of the Respondents by one Mr.V.Vijayraghavan which is affirmed on 21st March 1998. It has been stated therein that the Petitioner was to be considered for promotion subject to his becoming eligible therefor. According to the Respondents he became eligible for the first time in the year 1995-96 and thereafter he has been consistently considered for promotion. It is the case of the Respondents that the Petitioner had come in the zone of consideration but the decision on promotion is to be taken by the Selection Committee on all India level basis. In paragraph d(i) of the reply it is stated that the decision is to be taken by the Selection Committee consisting of Managing Director and three Directors not below the rank of Zonal Manager. The said Committee has applied its mind and thereafter on merit cum seniority basis granted the promotion to those who ranked higher on the basis of assessment of

comparative merit. The Petitioner was not found suitable and therefore was not promoted. This position continued for three years until the Petitioner retired. The enhanced financial powers were enjoyed by the Petitioner till retirement but that could not get him the promotion.

4. Mr.Naidu the learned Counsel for the Petitioner submitted that if the Petitioner was given responsibility/charge of the higher posts, there is no reason why the actual promotion should have been denied to him. The case of the Petitioner is that only because he has made certain reports which were found not to the liking of the superiors that he has been denied the promotion. Now, as far as these grievances are concerned, it is possible for the aggrieved person to harbour such grievances, but on the basis of such grievances and feelings it is not possible to say that the Authorities who were incharge of taking the decision were actuated by malafide. As pointed out in the reply, three Officers not below the rank of Zonal Manager were in the Committee which has taken the decision. It is easy to allege malafides but it is difficult to prove them, as has been often said. The Senior Officers not below the rank of Zonal Managers have taken the decision and that it is arrived on the basis of comparative merit. Merely because the Petitioner was denied promotion, we cannot find fault either with the decision making process or with the decision. It is therefore not possible to accept the case of the Petitioner that he has been wrongfully denied the

promotion which was due to him and that there is any violation of his rights or that therefore writ of mandamus should be issued.

5. The alternative prayer of the Petitioner is for stagnation increments. As far as this prayer is concerned, the relevant clause governing the stagnation increment is clause 5 of the instructions to be read along with Rule 7(3) of the Life Insurance (Staff) Regulation, 1960 which states that stagnation increment is to be given "subject to the work record being found satisfactory by the Managing Director". Ms Paranjape for the Respondents has drawn our attention to the Judgment of a Single Judge of Gujarat High Court and that of a Division Bench of that court in L.P.A. No.1050 of 1997 in case of Mahesh R.Shah Vs. L.I.C. confirming the view of the Single Judge. The same clause came up for consideration before that court and the Single Judge as well as Division Bench have observed that stagnation increment is not a matter of course. The stagnation increment would be subject to the work record being found satisfactory by the Managing Director and therefore, the Court has said that under Article 226 of the Constitution of India it will not be proper for the High Court to interfere in the subjective decision arrived at by the authoritative decision taken by the Promotion Committee.

6. In the facts of our case, however, we find that the Petitioner's claim for stagnation increment has not been

decided by the Respondents. The claim for his increment came for consideration sometime in April 1996. By their letter dated 15th April 1996 the Respondent informed the Petitioner that his claim for stagnation increment has been deferred. The same position appears subsequently also. There are further two letters dated 9th November 1996 and 15th November 1997 sent to the Petitioner. In the first letter it is stated that he will be considered for the stagnation increment on 1st July 1997 and thereafter he was again informed on 15th November 1997 that the Competent Authority had decided to defer to release the stagnation increment by one year i.e. upto 1-7-1998. In the meanwhile, he retired on 30th June 1998.

7. We have considered the relevant clause of the relevant rule. The instruction has been annexed along with annexures to the reply. We are conscious that the record of the employee concerned is to be found satisfactory for grant of stagnation increment. We are also conscious of the fact that it is the subjective determination of the authority concerned and therefore, normally as observed by the Division Bench of Gujrat High Court the Court is not expected to interfere. However, this subjective decision is to be arrived at on the basis of the objective data. On the facts of this case it is clear that the Petitioner was given responsibility of the higher posts and that his financial powers were enhanced from time to time to discharge the higher duties. This was so for

nearly 2 to 3 years. The Respondents must also keep in mind that the normal idea in awarding the stagnation increment is to reduce the rigour of denial of promotion. Therefore, the standard of assessing the merit for stagnation increment will not be as strict as in the case of consideration for promotion. What we find in the facts of this case is that the Respondents kept on deferring the decision of the stagnation increment which the Petitioner had claimed. Ultimately, he retired from the service. We are therefore of the view that the Respondents hereby should be directed to take a decision on his claim for stagnation increment for the two years when his case came for consideration.

8. In the circumstances, we direct the Respondents to examine the claim of the Petitioner once again and take the decision considering his overall record as to whether he was entitled to stagnation increment. The decision will be taken in three months from the date of receipt of a copy of this Judgment and will be communicated to the Petitioner. In the event, the decision is in favour of the Petitioner, his pay will be fixed accordingly and obviously, his retirement benefits will be fixed accordingly. We expect that the decision will be taken on merits without being influenced by any other extraneous factors. Rule is made absolute in part, though without any order as to costs.

( H.L.GOKHALE,J. )

(ABHAY S.OKA,J. )